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KAPLAN KIRSCH ROCKWELL

April 28, 2009

E-Filing

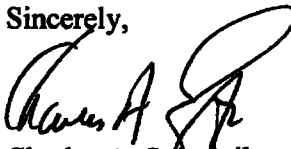
Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *King County, Washington – Verified Petition for an Exemption from 49 U.S.C.
§10901, Finance Docket No. 35148*

Dear Ms. Quinlan:

Attached is the Reply of King County, Washington, to “Protest” of All Aboard
Washington in the above referenced proceeding.

Sincerely,



Charles A. Spitulnik

Enclosure

cc: All Parties of Record

227661

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**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

FINANCE DOCKET NO. 35148

**KING COUNTY, WASHINGTON
- ACQUISITION EXEMPTION -
BNSF RAILWAY COMPANY**

**REPLY OF KING COUNTY, WASHINGTON TO
"PROTEST" OF ALL ABOARD WASHINGTON**

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Dated: April 28, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

FINANCE DOCKET NO. 35148

**KING COUNTY, WASHINGTON
– ACQUISITION EXEMPTION – BNSF RAILWAY COMPANY**

**REPLY OF KING COUNTY, WASHINGTON TO
“PROTEST” OF ALL ABOARD WASHINGTON**

King County, Washington (“**King County**”), a political subdivision of the State of Washington, hereby submits this Reply to the “Protest” filed by All Aboard Washington in this proceeding on April 8, 2009 (“**Protest**”). King County requests that this Board reject the Protest as untimely filed. Pursuant to 49 C.F.R. § 1104.13(a), any response to the Petition for Exemption King County filed in this matter (“**Petition**”) would have been due on or before October 13, 2008 (i.e., within twenty (20) days of September 22, 2008, the date on which King County filed its Petition). The Protest was not accompanied by a request that the Board permit All Aboard Washington to late-file it. The Protest is accordingly some five and one-half months overdue, and the Board should not permit All Aboard Washington to file it at this late date.

In the unlikely event that the Board accepts the Protest for filing, all of the arguments raised by All Aboard Washington have been fully addressed in the Petition. Accordingly, and for the reasons that King County has described in the Petition, the Board should deny the relief All Aboard Washington seeks.

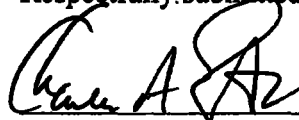
The Protest incorrectly asserts that the Board would be setting a precedent by bifurcating the restart right as requested in the Petition. Protest at 1. To the contrary, as discussed in the Petition, the Board has previously granted requests to acquire the right to reinstitute service from the abandoning railroad. Petition at 6 (discussing *Norfolk & Western Ry. Co. – Aban. – St. Marys &*

Minister in Auglaize County, OH, 9 I.C.C.2d 1015, 1018 (1993); *BG & CM R., Inc. – Exemption from 49 U.S.C. Subtitle IV*, STB Finance Docket No. 34399 (Service Date October 17, 2003), *slip op.* at 5).

All Aboard Washington also incorrectly argues that granting the restart right to King County would create a “conflict of interest” and “subvert the very purpose” of the Trails Act because King County is not a rail carrier. Protest at 1-2. As King County sets out in detail in the Petition, the core of the railbanking program is to allow entities other than rail carriers to maintain corridors as trails in order to preserve such corridors for use as rail lines in the future. Petition at 6-7. The trail sponsor is obligated by statute to make the corridor available to reinstitute service when the necessary criteria are satisfied under the Trails Act. Petition at 6 (citing *Norfolk & Western Ry. Co.*, 9 I.C.C.2d at 1018-19). Accordingly, the acquisition of the right to restart service constitutes an assumption of the statutory obligation to do so, and no “conflict of interest” can exist as a matter of law.

The Protest was untimely filed, and the Board therefore must reject it on jurisdictional grounds. If the Board nevertheless takes the Protest into the record of this proceeding, the Board should deny All Aboard Washington the relief it seeks because the Protest raises issues that are fully addressed by King County in the Petition, and obviated by operation of the Trails Act. As a result, and in view of all of the foregoing and of the facts and arguments presented in the Petition, King County respectfully requests that this Board reject the Protest.

Respectfully submitted,



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Dated: April 28, 2009

Certificate of Service

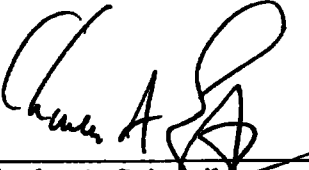
I hereby certify that on this 28th day of April, 2009, I caused to be served a copy of the foregoing Reply of King County, Washington, to "Protest" of All Aboard Washington to be served by first class mail, postage prepaid, upon:

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